

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Peerless Indemnity Insurance Company,                      Civil No.: 15-cv-4112 (ADM/LIB)

Plaintiff,

vs.

Sushi Avenue, Inc.

Defendant.

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**DECLARATION OF DANIEL W. BERGLUND IN SUPPORT OF  
MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT’S MOTION TO  
COMPEL AND MOTION TO REDESIGNATE**

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I, Daniel W. Berglund, hereby declare as follows:

1.     I am an attorney duly authorized and licensed to practice law in the United States District Court, District of Minnesota. I am one of the attorneys representing Plaintiff Peerless Indemnity Insurance Company (“Plaintiff”) in the above-captioned action.

2.     I am familiar with the discovery dispute between the parties, and I make this Declaration in Support of the Plaintiff’s Opposition to the Defendant’s Motion to Compel and Redesignate Confidential Material based upon personal knowledge.

3.     I received Defendant’s letter objecting to Peerless’s Redaction Log on September 8, 2016, and after reviewing the contested claims of privilege agreed to produce certain documents in unredacted form, but maintained Peerless’s assertions of privilege with respect to others.

4. Between September 16 and October 5, 2016, my office received eight batches of additional responsive documents potentially responsive to Defendant's discovery requests, totaling 5,538 pages of documents.

5. Defendant also produced 7,958 pages of documents on September 15, 2016, 572 pages of documents on September 19, 2016, and 5,981 pages of documents on September 22, 2016 that my office was required to review in anticipation of upcoming depositions.

6. With respect to the Defendant's allegation that the inadvertently produced e-mail was discussed between the parties in phone calls between counsel after September 26, 2016, I do not have any recollection of such a discussion but concede that the communication *may* have been addressed by Defendant's counsel in the broader context of a settlement discussion, wherein Defendant's counsel provided a narrative similar to the one outlined in its memorandum.

7. Upon information and belief, the settlement discussion referenced in Paragraph 6 took place on October 6, 2016.

8. Peerless completed its supplemental document production on October 7, 2016, and provided its Amended Redaction Log to Defendant on October 18, 2016.

9. Attached as Exhibit "A" is a true and accurate copy of select pages from Workers Compensation and Employers Liability Insurance policy, Policy No. WC 8948248. This document, bearing bates number P-SA000033-34, was produced by Peerless as part of its Initial Disclosures.

10. Attached as Exhibit “B” is a true and accurate copy of a Sushi Avenue statement from August 2014. This document was provided to Peerless in October of 2014 during its post-policy audit as an example of how Defendant’s kiosk operators were compensated. The document, bearing bates number P-SA0006135, was produced by Peerless in response to discovery requests.

11. Attached as Exhibit “C” is a true and accurate copy of an October 24, 2014 e-mail and e-mail thread from Nicole Roy and Dawn Mathison to Melissa Marroquin requesting clarification of the amounts listed on the 1099s that Defendant issues to its sushi kiosk operators. This document was produced by Horning Insurance Agency in response to a subpoena *duces tecum*.

12. Attached as Exhibit “D” is a true and accurate copy of an excerpted page from a “Contract with Independent Contractor”. This document, bearing bates number P-SA0000337, was produced by Peerless as a part of its Initial Disclosures.

13. Attached as Exhibit “E” is a true and accurate copy of Plaintiff’s Responses to Defendant’s Requests for Production of Documents, dated May 23, 2016.

14. Attached as Exhibit “F” is a true and accurate copy of a September 26, 2016 e-mail from Dan Berglund to Tom Harlan and Meghan Rodda regarding discussions about extending the discovery schedule.

15. Attached as Exhibit “G” is a true and accurate copy of a September 26, 2016 e-mail and e-mail thread from Dan Berglund to Tom Harlan and Meghan Rodda with an attached redline letter addressed to the court discussing discovery issues.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Dated: November 21, 2016

GROTEFELD HOFFMANN LLP



Daniel W. Berglund (MN #0329010)

Meghan M. Rodda (MN #0394984)

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